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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No. 111

H. J. HARRIS, GEORGE W. HARTMAN, OLEN B. HINER, P. M. BROOKS, AND DIVISION NO. 1079, AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY AND MOTOR COACH EMPLOYEES OF AMERICA, A. F. L.,

Appellants,

v.

JOHN S. BATTLE, GOVERNOR OF THE COMMONWEALTH OF VIRGINIA, H. LESTER HOOKER, CHAIRMAN, AND W. MARSHALL KING AND RALPH T. CATTERALL, MEMBERS, STATE CORPORATION COMMISSION, AND WILLIAM C. SEIBERT, AGENT IN CHARGE,

Appellees

APPEAL FROM THE SUPREME COURT OF APPEALS OF VIRGINIA

STATEMENT OF APPELLEES OPPOSING JURISDICTION AND MOTION TO DISMISS

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STATEMENT OF APPELLEES OPPOSING JURISDICTION AND MOTION TO DISMISS

The appellees, believing that the matters set forth herein will demonstrate the lack of jurisdiction of this Court and, further, the lack of substance in the questions presented

by this appeal, file this statement in opposition to the appellants' statement as to jurisdiction. The appellees include herein their motion to dismiss the appeal on the ground that the appeal was directed to the wrong state court and on the further ground that the decision below was not rested on a federal question or, in the alternative, to dismiss or affirm the order of the court below on the ground that the federal questions raised on behalf of the appellants are so unsubstantial as not to need further argument. The matters here relied upon are more particularly stated below.

I

The State Statute Involved and the Nature of the Case

A. *The Statute*

The appellants contend that Chapter 696 of the Acts of Assembly of Virginia, 1952 (Sections 56-509 to 56-528, inclusive, of the Code of Virginia, as amended) conflicts with the laws of the United States and is repugnant to the Constitution of the United States. The Act may be summarized by quoting its title, which reads as follows:

> "An Act to prevent interruption or suspensions in the operation of certain public utilities, and to that end to declare it to be the public policy of the State that the functioning and operation of such utilities are clothed with a public interest and are essential to the health, safety and welfare of the citizens of Virginia; to authorize the Governor to take possession of and operate on behalf of the State public utilities and to prescribe the terms and conditions of such taking possession of and operation, and the power, authority and duty of the Governor with respect thereto; to provide how any such utility may be returned to private management and control; to declare certain acts unlawful; and to impose penalties."

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Appendix A, attached hereto, contains the full text of the statute.

B. *Statement of the Case and the Proceedings Below*

1. The Washington, Virginia and Maryland Coach Company, Incorporated, (Arnold Bus Line) and Division No. 1079, Amalgamated Association of Street Electric Railway and Motor Coach Employees of America, A. F. of L. exchanged correspondence on September 23-24, 1952, looking to the commencement of negotiations for the purpose of modifying the existing agreement between them which was effective through November 23, 1952.

2. On October 23, 1952, negotiations between the Company and the Union began and continued thereafter. A representative of the Federal Mediation and Conciliation Service participated in the mediation of this dispute. (Notice of the existing said dispute was sent out to the proper parties on October 22, 1952, pursuant to the Taft-Hartley Act).

3. On November 13, 1952, John S. Battle, Governor of Virginia, pursuant to the Virginia Public Utilities Act, (Chapter 17 of Title 56 of the Code of Virginia, Sections 56-509—56-527), issued a proclamation stating that he would take possession of the Company at 12:01 a.m. on November 24, 1952, to protect the public health, safety and welfare if a cessation of work occurred.

4. On November 21, 1952, the Governor issued a second proclamation stating that there apparently would be no interruption of service on November 24, but since the threat of such interruption continued he directed his agents to seize the Company "whenever there occurs substantial curtailment, interruption or suspension in the operation of said Company". The members of the State Corporation Commission were designated as the agents of the Governor

and thereafter the Corporation Commission designated William C. Seibert as "Agent in Charge".

5. On December 10, 1952, after negotiations had failed to produce a new agreement, the Union engaged in a strike against the Company in support of their bargaining demands.

6. On December 11, 1952, the Governor, acting through his designated agents, took possession of the plants and equipment of the Company and began the operation of it.

7. On December 23, 1952, the appellants filed an amended bill in chancery praying for a preliminary injunction in the Circuit Court of the City of Richmond, Virginia, restraining appellees from exercising any dominion or control over the property of the Company. The Circuit Court refused to grant this preliminary injunction.

8. On February 5, 1953, it appearing to the Governor that the Company was then in a position to resume its normal operations, he issued a proclamation placing the Bus Line back under the control of its owners on February 9, 1953. Since that time he has exercised no dominion or control over the plant, equipment or operation of it.

9. On May 12, 1953, the said Circuit Court heard this case upon the appellants' amended bill for a permanent injunction, and in the alternative, a declaratory judgment.

10. On June 12, 1953, the Circuit Court entered its decree denying the permanent injunction and declaring Chapter 696 of the Acts of Assembly of Virginia, 1952, (Sections 56-509 to 56-528 of the Code) valid in all respects.

11. On January 21, 1954, John S. Battle's term of office as Governor of Virginia expired, and he was succeeded by Thomas B. Stanley.

12. On January 27, 1954, almost one year after John S. Battle had relinquished all possession of and control over the property of the Company, the court below entered its

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order refusing an appeal from the above-mentioned decree of the Circuit Court, stating therein:

> "The petition * * * having been maturely considered and a transcript of the record of the decree aforesaid seen and inspected, the court being of opinion that there no longer exists a justiciable issue to be determined by this court, doth reject said petition, and refuse said appeal, the effect of which is to affirm the decree of the said circuit court."

C. *The Questions Presented*

1. Should not this appeal have been directed to the Circuit Court of the City of Richmond, Virginia, the highest court of the State for the purposes of this case?

2. Does this Court have jurisdiction to review the decision of the court below since such decision rested on a non-federal ground?

3. Is Chapter 696 of the Acts of Assembly of Virginia, 1952, in conflict with the Labor Management Relations Act of 1947?

4. Is Chapter 696 of the Acts of Assembly of Virginia, 1952 repugnant to the Constitution of the United States and the Amendments thereto?

II

Argument

A. *This Appeal Should Be Dismissed on the Ground that It Was Directed to the Wrong State Court*

The Supreme Court of Appeals of Virginia refused to take jurisdiction of the case on its merits, giving as its reason that there no longer existed a justiciable controversy. Thus, the court below has not given a decision in favor of the validity of a state statute. Instead, it declined to take jurisdiction of the case. Therefore, if the appellants have an appeal to this Court, it is from the decree of

the Circuit Court of the City of Richmond. The judgment of that court is that of the highest court of the State for the purpose of this appeal, since the highest state tribunal has denied a writ of error to the inferior court solely and expressly for want of jurisdiction. *Randall* v. *Board of Commissioners*, 261 U.S. 252; *Virginian Ry. Co.* v. *Mullens*, 271 U.S. 220; *Cuwahoga River Power Co.* v. *Northern Realty Co.*, 244 U.S. 300; *Norfolk & S. Turnpike Co.* v. *Virginia*, 225 U.S. 264; *Western Union Telegraph Co.* v. *Crovo*, 220 U.S. 364; *Western Union Telegraph Co.* v. *Hughes*, 203 U.S. 505; *Bacon* v. *Texas*, 163 U.S. 207; *Stanley* v. *Schwalby*, 162 U.S. 255.

The appellants take the position that, since the court below, in refusing the appeal, stated that the effect of its action was to affirm the decree of circuit court, this Court should hold that the court below decided the case on its merits. When the court below dismissed the writ of error to the Circuit Court of the City of Richmond solely for want of jurisdiction, the obvious and only effect of such action was to leave the decree of the said circuit court as it originally was entered.

The Supreme Court of Appeals of Virginia did not state that the effect of its order was to sustain the constitutionality of the state statute involved. It did not say the decree was "plainly right", as is customary when an appeal is denied on the merits. The court below merely said that, because it could not consider the matter on its merits for want of jurisdiction, it could not alter the final decree of the Circuit Court of the City of Richmond. Therefore, the appeal to this Court should be dismissed as having been brought contrary to law. *Randall* v. *Board of Commissioners*, 261 U.S. 252; *Western Union Telegraph Co.* v. *Hughes*, 203 U.S. 505; *Norfolk & S. Turnpike Co.* v. *Virginia*, 225 U.S. 264.

The appellants request this Court to regard their appeal papers as a petition for writ of certiorari, in accordance with Title 28, United States Code, § 2103, if it deems a petition for writ of certiorari to be the appropriate method of review under the circumstances of this case. If the highest court of a state dismisses a writ of error or petition for certiorari for want of jurisdiction and does not pass on the merits of the case, the writ of certiorari of this Court should be directed to the inferior court which enters the final decree. Unless this be done, a writ of certiorari to the highest court of the state will be dismissed by this Court. *Western Union Telegraph Co.* v. *Priester*, 276 U.S. 252; *American Railway Express Co.* v. *Levee*, 263 U.S. 19.

Thus, it can be seen that the same principles of law govern writs of certiorari as govern petitions for appeal, insofar as proper state courts are concerned. The authorities for the two are cited interchangeably. Therefore, if this Court regards the appeal papers in this case as a petition for writ of certiorari in accordance with Title 28 United States Code, § 2103, the petition should still be dismissed on the authority of the cases cited above.

B. *This Appeal Should Be Dismissed Since the Decision of the Court Below Rests on a Non-Federal Ground*

This Court will not review decisions of state courts when their decisions rest on non-federal grounds. *Hedgebeth* v. *North Carolina*, 334 U. S. 806; *McCoy* v. *Shaw*, 277 U. S. 302; and *Howat* v. *Kansas*, 258 U. S. 181. Furthermore, this Court has repeatedly held that it is without jurisdiction to review a judgment of a state court unless it *clearly* appears that the decision turned on a federal question. *Stembridge* v. *Georgia*, 343 U. S. 541 and *Copperweld Steel Co.* v. *Industrial Commission*, 324 U. S. 780.

The order of the court below does not clearly indicate that the decision rested on a federal ground. To the contrary, the order below clearly indicates on its face that the decision rested on a non-federal ground. It recites that the appellants' appeal was refused because the court was "of opinion that there no longer exists a justiciable issue to be determined * * *".

However, the appellants allege that the order of the court below disposing of the case on the non-federal ground of mootness is so untenable and unfounded that it is arbitrary and a mere devise to prevent a review by this Court. They thus urge that this Court has jurisdiction and should review the decision of the court below. It is true that if a state court decision on a non-federal ground is plainly unfounded this Court may review such a decision. Likewise, it is true that if the non-federal ground of decision has fair support, this Court will not inquire whether the rule applied by the state court is right or wrong, or substitute its own views of what is the better rule. *Broad R.P. Co.* v. *South Carolina*, 281 U.S. 537; *Fox River Paper Co.* v. *Railroad Commission*, 274 U. S. 651; and *Enterprise Irrig. Dist.* v. *Farmers Mut. Canal Co.*, 243 U.S. 157.

The Supreme Court of Appeals of Virginia has repeatedly held that it will not sit to determine moot questions. Only real controversies are entitled to invoke its jurisdiction, and whenever it appears that no controversy exists or, if one did exist, it has ceased to exist, the case before it will be dismissed. *Miller* v. *Union of United Brewery*, 187 Va. 889; *Hankins* v. *Virginia Beach*, 182 Va. 642; *Flicklen* v. *Danville*, 146 Va. 426; *Gilmer* v. *Francisco*, 131 Va. 47; and *Franklin* v. *Peers*, 95 Va. 602.

As already pointed out, on December 11, 1952, John S. Battle, then Governor of Virginia, exercised the State's power of eminent domain, which had been delegated to him

by the General Assembly of Virginia under the authority of the statute here involved, and took possession of the property of the bus line. Subsequent to that date, the Circuit Court of the City of Richmond denied the extraordinary remedy of a preliminary injunction. On February 9, 1953 the State returned the property of the Company to its original owner. Since that time the State has exercised no dominion or control over the property and has not threatened to do so. The prayer for a permanent injunction was denied three months later, on May 12, 1953. Almost one year after the State had relinquished control of the property, and one week after John S. Battle had vacated the office of Governor of Virginia, the court below considered and refused the petition for a writ of error filed by the appellants.

Under such circumstances the court below had ample justification in both the law and the evidence to refuse to consider the appellants' petition for a writ of error on the ground that there no longer existed a justiciable controversy. John S. Battle and his duly authorized agents had surrendered control of the property almost a year previously and they had not threatened to seize the property after that time. In fact, John S. Battle was no longer Governor of Virginia and an injunction order restraining him would be of no effect whatsoever.

The position taken by the court below coincides with that taken by this Court in numerous cases. See, *Congress of Industrial Organizations* v. *McAdory*, 325 U. S. 472; *Alabama State Federation of Labor* v. *McAdory*, 325 U. S. 450; *Love* v. *Griffith*, 266 U. S. 32; *KFAB Broadcasting Co.* v. *Sorenson*, 290 U. S. 599; *Commercial Cable Co.* v. *Burleson*, 250 U. S. 360; *Shaffer* v. *Howard*, 249 U. S. 200; *Standard Oil Co.* v. *United States*, 283 U. S. 163.

It is clear, then, that the non-federal question of moot-

ness on which the court below based its decision is not untenable and so unfounded that it may be regarded as arbitrary.

Finally, the appellants contend that if the suit to enjoin the enforcement of the statute and the orders promulgated thereunder becomes moot when the property is returned by the State, there can be no test of the validity of the law. This consideration alone, it is urged, warrants a review by this Court. While the appellants' contention would not necessarily be true, it is not a valid argument. In *Montgomery B. & C. T. C.* v. *Ledbetter Erec. Co.*, 344 U. S. 178, it was held that however appealing such an argument might be, it does not warrant the enlargement of this Court's jurisdiction.

C. *Should This Court Reject the Appellees' Motion to Dismiss for Lack of Jurisdiction the Case Should Be Remanded to the Court Below for Decision on the Merits*

If this Court rejects the appellees' motion to dismiss this appeal for want of jurisdiction, the constitutionality of the state statute involved should not be considered at this time. The court below has not construed the said statute nor considered its constitutionality. Under such circumstances, this Court should remand the case with directions that it be considered on its merits. *Dean Milk Co.* v. *Madison*, 340 U. S. 349; *Musser* v. *Utah*, 333 U. S. 95.

D. *The Virginia Statute Is Not In Conflict With the Labor Management Relations Act of 1947*

The Virginia statute has for its purpose the continuous and uninterrupted functioning of certain public utilities clothed with a public interest. In order to carry out this purpose, the General Assembly of Virginia, in the exercise

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of the sovereign power of eminent domain, has authorized the Governor of Virginia to seize the property of any utility if its operation is impaired or suspended *for any reason.* The statute does not regulate labor disputes, prohibit strikes or interfere with collective bargaining. It does not conflict with sections 151 and 157 of Title 29, U. S. Code or any other provisions of the Labor Management Relations Act of 1947. To the contrary, the state statute expressly provides that labor disputes shall be settled by collective bargaining between the parties to such disputes. § 56-519, Code of Virginia.

The record shows that the State in no way interfered with employees' right of collective bargaining (Tr. pp. 76, 77). Furthermore, the president of the local union testified that collective bargaining between the union and the company continued after state seizure (Tr. p. 70). It is clear, therefore, that the Virginia statute is not in conflict with federal legislation.

The statute condemned by this Court in *Amalgamated Association* v. *Wisconsin Employment Relations Board,* 340 U. S. 383, invaded the field of labor relations already occupied by federal legislation. *Garner v. Teamsters, C. & H. Union,* — U. S. —, 98 L. Ed. 161, held that the Labor Relations Act of Pennsylvania did likewise.

The Virginia statute simply permits the exercise of the power of eminent domain for the protection and safety of Virginia citizens. It does not regulate public utilities or labor disputes. Certainly, there can be no question of the fact that the Governor of Virginia could, even in absence of legislation, call out the state militia and seize the utility if conditions became sufficiently serious. When the health, safety and welfare of a community are endangered a state has the power to deal with such emergencies. *Munn* v. *Illinois,* 94 U. S. 113.

While it may be true that a state is not permitted to enact concurrent legislation of peaceful strikes for higher wages since the Congress has occupied the field, the Virginia statute does not attempt to do so. The Virginia statute has not entered this field. It simply protects its citizens by permitting the Governor to exercise the sovereign power of eminent domain.

E. *The Virginia Statute is Not Repugnant to the Constitution of the United States*

States are, of course, subject to the limitations imposed by the Commerce Clause and the Supremacy Clause of the Constitution of the United States. However, it is equally true that when there is no conflict between state and federal legislation, and there is no undue burden upon interstate commerce, this Court will not strike down state legislation.

As already pointed out, the State does not attempt to regulate labor disputes. Furthermore, the State does not attempt to regulate commerce. It merely attempts to protect its citizens in times of emergency. In the instant case the local transit system served Arlington County, Virginia, and the District of Columbia. Many persons in the Arlington area were dependent upon this bus line for transportation to and from work, a great number of them employed at the Pentagon and engaged in defense work. When the employees were on strike, sections of the heavily populated Arlington County were left without transportation. The State's seizure and operation of the bus line, therefore, created no burden on interstate commerce and was not an interference with interstate commerce. *Rather, it restored partial operation of the bus line and helped insure the flow of commerce to the benefit and protection of the health, safety and welfare of the public.*

The right of every state to exercise the power of eminent domain is an inherent power. Further, such power was not surrendered by the states to the United States. *Cincinnati* v. *Louisville & N. R. Co.*, 223 U. S. 390.

Finally, it is urged that the Virginia statute interferes with freedom of speech since it provides that the establishment of a picket line near or adjacent to the property operated by the State shall be deemed an unlawful obstruction of the exercise of an essential function of government. See, section 56-517, Code of Virginia.

Peaceful picketing is no longer considered merely free speech. *Carpenters and Joiners Union* v. *Ritter's Cafe*, 315 U. S. 722. Compare, *Thornhill* v. *Alabama*, 310 U. S. 88. Furthermore, this Court held in *Bakery and Pastry Drivers' Union* v. *Wohl*, 315 U. S. 769, that a state court is free to enjoin peaceful picketing when no labor dispute exists between the union and the employer.

In the instant case, there was no dispute between the State and its employees and, in fact, no picketing was attempted by anyone. Furthermore, the appellees are aware of no case which holds that the Fourteenth Amendment protects picketing which may interfere with an essential function of State government.

III

Conclusion

Wherefore, the appellees respectfully submit this statement showing that the questions upon which the decision of this case depends are so unsubstantial as not to need further argument; and the appellees respectfully move the Court to dismiss this appeal, or, in the alternative, to affirm the order of the court below.

Respectfully submitted,

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May 13, 1953.

APPENDIX A

Chapter 17, Title 56, Code of Virginia

(Chapter 696, Acts of Assembly, 1952)

§ 56-509. Declaration of policy.—The continuous, uninterrupted and proper functioning and operation of public utilities engaged in the business of furnishing water, light, heat, gas, electric power, transportation or communication, or any one or more of them, to the people of Virginia are hereby declared to be essential to their welfare, health and safety. It is contrary to the public policy of the State to permit any substantial impairment or suspension of the operation of any such utility and it is the duty of the government of the State to exercise all available means and every power at its command to prevent the same so as to protect its citizens from any dangers, perils, calamities or catastrophes which would result therefrom. It is therefore further declared that such utilities are clothed with a vital public interest and to protect the same it is necessary that impairment or suspension of the operation of any such utility for any reason be prevented to the extent and by the means hereinafter provided.

§ 56-510. Duty of Governor when there is threat of curtailment, interruption, etc., of operation.—Whenever in the judgment of the Governor there is an imminent threat of substantial curtailment, interruption or suspension in the operation of any public utility hereinabove mentioned he shall promptly make an investigation to determine whether, in his opinion, an actual curtailment, interruption or suspension of operation will constitute a serious menace or threat to the public health, safety or welfare, and if he concludes that it will, he shall forthwith issue an executive proclamation so declaring and stating that at the time of such curtailment, interruption or suspension of operation he will take immediate possession of the utility, its plant and equipment, or so much thereof as may be necessary, for the use of and operation by the Commonwealth. Where the Governor finds it advisable for effectuation of the pur-

poses hereof he may by proclamation advance or defer such taking of possession.

§ 56-511. Power of Governor to possess and operate utility.—The Governor may possess and operate such properties in the manner hereinafter provided and through such department or agency of the State as he may designate.

§ 56-512. Employment of utility employees by State; information to be furnished.—If the Governor shall issue a proclamation of intention to take possession of and operate any such utility as provided herein, he shall immediately ascertain what positions of employment are necessary to be filled in order to operate the same to such extent as may be required to protect the public safety and welfare, and the duties incident to each such position, and shall ascertain from those persons then employed in such positions whether they will accept employment by the State to perform like duties for the State. Any such person who will accept employment by the State shall be entitled to be employed and to continue in such employment for such time as the Governor may determine. It shall be the duty of the management of any such utility to provide promptly and furnish to the Governor, upon his request, detailed information with respect to the positions necessary to be filled and the duties incident to or pertaining to each such position, and the name of the person presently holding same.

§ 56-513. Replacement of utility employees unwilling to work for State.—In the event that any person or persons then employed by the utility in any such necessary positions shall fail to indicate an intention to work for the State in operating the utility, when inquiry is made of such person by the Governor or his agent, the Governor shall immediately institute measures to employ another person or other persons to perform the required duties of any one not indicating such intention. No person who upon such inquiry fails to indicate intention to work for the State may thereafter claim the right to employment by the State provided in § 56-512.

§ 56-514. Status as employee of utility unaffected by acceptance or refusal of employment by State.—The status of no person as an employee of the utility shall be affected

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by either his acceptance of employment by the State or by his refusal of such employment.

§ 56-515. Entry upon property of utility after proclamation of intention to take possession.—After any proclamation of intention to take possession the Governor may, by and through agents designated by him, enter upon the property of the utility with prospective employees and familiarize them with the nature of the work incident to the positions in which it is contemplated they will be employed and train them to discharge the duties, thereof. The management of the utility and all State departments, institutions and agencies shall cooperate with the Governor in the operation of the utility and in the securing and training of persons for employment in such operation.

§ 56-516. When possession of utility to be delivered; procedure upon refusal of possession.—Unless the management of the utility believes that the Governor is mistaken in his conclusion as to the curtailment, interruption or suspension of operation, actual possession of the utility, its properties and facilities, shall be delivered at the time stated in the executive proclamation. In the event of refusal of possession, upon application of the Governor any court of record of any county or city in which the utility's main executive offices in this State are located, or the judge thereof in vacation, shall issue a rule requiring the authorized representatives of such utility to show cause why possession should not be delivered at the time stated in the executive proclamation. The rule shall be given preference over all other matters pending before such court. After reasonable notice, the court or judge shall hear the parties and determine as promptly as possible the question of fact relating to the curtailment, interruption or suspension of the operation of the utility and whether the facts require the delivery of possession and render judgment requiring or denying delivery of possession as the case may be.

§ 56-517. Interference with or obstruction of Governor, State representative or agent.—No person, organization or association or any bargaining representative of the employees or any representative or agent of the management of the utility shall interfere with or obstruct the Governor,

or any State representative or agent designated by him, in his efforts to secure or contract for the services of the officers and employees of the utility or of any person to engage in or continue the operation of the utility, or shall encourage or solicit any such persons not to render such services or shall interfere in or obstruct the training of prospective employees in the operation of the utility by the Governor or by the designated State representatives. Upon seizure of any utility as provided herein the establishment or conduct of a picket line near or adjacent to any work engaged in or proposed to be engaged in by any such persons employed or sought to be employed by the State in its operation of such utility shall be deemed an unlawful obstruction of the exercise of an essential function of the State Government and a violation of this section; and all persons ordering, directing, encouraging or participating in any such picketing shall be guilty of violating this section.

§ 56-518. Expense of operation, etc.; payment of revenues, etc., into State treasury.—The expense of operating any utility pursuant to the provisions of this chapter, and of training prospective employees or otherwise preparing to operate the same shall be paid out of the appropriation for criminal charges upon such authorizations as the Governor may prescribe, and all funds, revenues or reimbursements derived from or received as a result of such operations shall be paid into the State treasury and credited to such appropriation, or, after full reimbursement of such appropriation for expenditures therefrom, additional funds may be credited to such other appropriations as the Governor may direct, and subsequent disbursements in carrying out the purposes of this chapter may be made therefrom.

§ 56-519. Previously established salaries, wages, conditions of employment, etc., to be observed; collective bargaining.—During the period of the State's operation of any utility, pursuant to the provisions of this chapter, the Governor shall observe the utility's previously established salaries, wages, conditions of employment, practices as to merit or length of service increases and as to promotions; it being the intent of this chapter that any disputes as to

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such matters shall be settled by collective bargaining between the parties to such disputes.

§ 56-520. Collection and disposition of revenues accruing from utility.—The Governor may provide in such manner as he deems appropriate for the collection of the gross revenues accruing from the utility during the time of its oepration by the State. After payment of proper operating expenses and reimbursement of the State for all expenses incurred in preparing to operate same and making allowances of the additional items as provided in § 56-523 in defining net income, eighty-five per centum of the net income shall be paid to the utility as compensation for the temporary use of its business, facilities and properties. The amount of money so paid shall in nowise control the amount of just compensation to be allowed the utility. In the event of disagreement as to the amount of payments under this section, either party may, by appropriate petition, submit the matter to the State Corporation Commission with the right of appeal from its decision to the Supreme Court of Appeals.

§ 56-521. Restoring possession to utility.—Whenever the authorized representatives of any such utility shall notify the Governor, in writing, stating that the utility is in position to and can and will resume operations and render normal public service, and shall satisfy the Governor, or his designated agent of the correctness of such statement, the Governor, or such agent, upon the request of the utility management, shall restore to the possession of the utility its properties and facilities. In the event that the Governor or such agent for any reason refuses such restoration of possession, the utility shall have the right to have a rule issued by any court of general chancery jurisdiction in the city of Richmond, or the judge thereof in vacation, to show cause why such possession should not be restored. The rule shall provide for ten days' notice to the Governor or such agent before cause is required to be shown. The decision of such court, or the judge thereof in vacation, on such question shall be final as to conditions then existing, but shall not be a bar to subsequent requests by the utility for restoration of possession. Nothing in this section shall be con-

strued as denying to the Governor the right to restore possession at any time when, in his judgment, the public interest so requires.

§ 56-522. Compensation to utility.—The utility shall be entitled to receive reasonable, proper and lawful compensation for the use of its business, facilities and properties by the State. In the event the parties in interest are unable to agree upon the amount of such compensation either party may file a petition in the court rendering judgment requiring delivery of possession of the utility, or in the event no such judgment was rendered, in any court mentioned in § 56-516, for the purpose of having the same judicially determined. The court shall, without a jury, hear such evidence and argument of counsel as may be deemed appropriate and render judgment thereon or may refer to a commissioner such questions as are considered proper and act upon the commissioner's report as in ordinary chancery proceedings. An appeal shall be to the Supreme Court of Appeals from any final judgment of the court rendered under this section. If the amount of compensation so determined shall be less than the sum paid to the utility under the provisions of § 56-520 the utility shall return the excess by paying the same to the State Treasurer to be credited as the Governor may direct in accordance with the provisions of § 56-518.

§ 56-523. Definitions.—The words "utilities" or "public utilities" when used in this chapter shall be construed to mean any person, partnership, association or corporation, engaged in the business of furnishing electric power, water, light, heat, gas, transportation or communication, or any one or more of them, to the people of Virginia.

"Net income" with respect to operation of a utility by the State shall be construed to mean the gross revenues derived from such operation after deducting therefrom:

(1) The costs of operation and maintenance of the utility.

(2) The amount of depreciation during the time of such operation based on the amount allowed in the utility's federal income tax return.

(3) Federal, State, and local taxes which would be payable by the utility, if the properties were operated by it.

(4) Interest on the indebtedness of the utility, and
(5) Payments for the cost of insurance.

All of such items shall be prorated on an annual basis in proportion to the time the plant is operated by the State.

§ 56-524. Penalties.—Any person violating any of the provisions of §§ 56-512, 56-515 or 56-517 shall be guilty of a misdemeanor and upon conviction of same shall be fined not less than ten nor more than one thousand dollars, and may be imprisoned in jail for not more than twelve months.

§56-525. Injunction against violation of chapter.—In addition to the remedies herein provided, the Governor is hereby authorized to apply to the circuit court of the city of Richmond or to any court mentioned in § 56-516 for, and such court shall have jurisdiction upon hearing and for cause shown to grant, a temporary or permanent injunction restraining any person, organization, association or corporation from violating any provision of this chapter irrespective of whether or not there exists an adequate remedy at law.

§ 56-526. Duty of Commonwealth's attorneys and Attorney General; employment of special counsel.—It shall be the duty of every attorney for the Commonwealth to whom the Governor shall report any violation of §§ 56-512, 56-515 or 56-517 to cause proceedings to be prosecuted without delay for the fines and penalties in such cases. The Attorney General shall be charged with the duty of enforcing all other provisions of this chapter and shall represent the Governor in all matters arising thereunder. Whenever he shall deem it in the best interest of the State the Attorney General may employ special counsel to assist him in carrying out the duties imposed by this section and the expenses so incurred shall be considered as an expense of operation of the utility and paid in accordance with the provisions of § 56-518.

§ 56-527. Chapter not applicable to certain carriers.—Nothing in this chapter shall apply to any express company, sleeping car company, common carrier engaged in interstate commerce by railroad or by air or to any company which is

directly or indirectly owned or controlled by any carrier by railroad.

§ 56-528. Governor's powers as commander in chief not impaired.—Nothing in this chapter shall be considered or construed as in any way questioning or impairing the constitutional or statutory powers of the Governor as commander in chief of the land and naval forces of the State.